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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE, Plaintiff and Respondent, v. DONALD DEAN WASHINGTON, Defendant and Appellant.	B215799 (Los Angeles County Super. Ct. No. NA080054)

APPEAL from a judgment of the Superior Court of Los Angeles County, Richard Romero, Judge. Affirmed with directions.

Holly J. Jackson, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Michael R. Johnsen and Colleen M. Tiedemann, Deputy Attorneys General, for Plaintiff and Respondent.

Appellant Donald Dean Washington contends that the trial court improperly denied his request for self-representation, which appellant asserted during the underlying trial. We find no reversible error, and thus affirm.

PROCEDURAL BACKGROUND

On December 1, 2008, an information was filed charging appellant in count 1 with second degree robbery (Pen. Code, § 211), and in count 2 with second degree commercial burglary (Pen. Code, § 459).[1] It also alleged that appellant personally used a pellet gun in the commission of the crimes (§ 12022, subd. (b)(1)), that he had suffered two convictions for purposes of the "Three Strikes" law (§§ 667, subds. (b)-(i), 1170.12, subds. (a)-(d)), and that he had served a prison term for a prior felony conviction or juvenile adjudication (§§ 667, subd. (a)(1)), 667.5, subd. (b)). Appellant pleaded not guilty to the charges and denied the special allegations.

On March 20, 2009, a jury found appellant guilty on counts 1 and 2, and found the gun use allegation to be true in connection with count 1. At the commencement of the bifurcated trial on the prior conviction allegations, appellant requested leave to represent himself, which the trial court denied. The trial court later ruled that one of the two prior convictions alleged in the information did not constitute a "strike," and following a bench trial, it found that the remaining prior conviction allegations were true. Appellant was sentenced to a total of 12 years in prison.

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[1] All further statutory citations are to the Penal Code.

FACTUAL BACKGROUND

A. *Prosecution Evidence*

In October 2008, Vannak Peng owned and operated a donut shop in Long Beach. During the night of October 23, 2008, Peng was standing at the cash register when a man entered the store, pointed a gun at Peng, and demanded money. After Peng opened the cash register and offered the robber some cash, the robber accepted the money and tried to take the register as well, but was defeated by a cord that held the register. The robber dropped the register and fled with the money that Peng had given him. Security cameras within the store recorded the event.

Peng identified appellant as the robber in a photographic lineup, but told the investigating police officers -- and testified at trial -- that he was not "[100] percent sure" about the identification.[2] Appellant's fingerprint was found on the bottom of the cash register. A search of appellant's residence disclosed a hat, jacket, and pellet gun resembling the robber's hat, jacket, and gun, as depicted in the security camera videorecording.[3] The items were found in a hallway cabinet near a bedroom.

B. *Defense Evidence*

Appellant testified that he did not rob the donut shop. According to appellant, in October 2008, he lived with two other people and attended classes at Long Beach City College. On October 23, 2008, he arose at 6:30 a.m., stopped at his niece's residence on his way to school, and took his niece to Peng's donut shop, where he bought coffee and a donut. While appellant was in the donut shop, his

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[2] Yom Yeav and Tong Ing, who were in the store during the robbery, testified that they heard the event but could not identify the robber.

[3] The jury viewed the security camera video recording of the robbery.

niece's change slipped under the cash register, and he lifted the register to retrieve the change. He then accompanied his niece back to her residence and went to school.

Appellant denied that the gun, hat, and jacket found in his residence belonged to him. He provided a detailed description of the residence's floor plan, and testified that the cabinet containing the items was located near his roommate's bedroom.

DISCUSSION

Appellant contends that the trial court improperly denied his request for self-representation, which he asserted following the first phase of trial. For the reasons explained below, we discern no reversible error.

A. *Request for Self-Representation*

1. *Governing Principles*

In *Faretta v. California* (1975) 422 U.S. 806, 807 (*Faretta*), the United States Supreme Court held that under the Sixth Amendment of the United States Constitution, a defendant in a criminal case "has a constitutional right to proceed without counsel when he voluntarily and intelligently elects to do so." (*Faretta, supra*, 422 U.S. at p. 807, italics deleted.) Under *Faretta*, "[a] trial court must grant a defendant's request for self-representation if three conditions are met. First, the defendant must be mentally competent, and must make his request knowingly and intelligently, having been apprised of the dangers of self-representation. [Citations.] Second, he must make his request unequivocally. [Citations.] Third, he must make his request within a reasonable time before trial. [Citations.]" (*People v. Welch* (1999) 20 Cal.4th 701, 729.)

As our Supreme Court has explained, the right to self-representation under

the federal Constitution is unconditional only if invoked "within a reasonable time prior to the commencement of trial. [Citations.] When a motion for self-representation is not made in a timely fashion prior to trial, self-representation no longer is a matter of right but is subject to the trial court's discretion." (*People v. Bradford* (1997) 15 Cal.4th 1229, 1365 (*Bradford*).) This is because "[a] request for self-representation asserted for the first time after trial has commenced . . . is 'based on nonconstitutional grounds.'" (*People v. Bloom* (1989) 48 Cal.3d 1194, 1220, quoting *People v. Windham* (1977) 19 Cal.3d 121, 128-129, fn. 6 (*Windham*).)

When a request for self-representation is untimely, the trial court is obliged to exercise its discretion in light of certain factors identified in *Windham*, *supra*, 19 Cal.3d at pp. 128-129. (*People v. Marshall* (1996) 13 Cal.4th 799, 827.) These factors include "the quality of counsel's representation of the defendant, the defendant's prior proclivity to substitute counsel, the reasons for the request, the length and stage of the proceedings, and the disruption or delay that might reasonably be expected to follow the granting of such a motion." (*Windham*, *supra*, 19 Cal.3d at p. 128.) Also pertinent are the defendant's mental competence (*Bradford*, *supra*, 15 Cal.4th at p. 1373; *People v. Clark* (1992) 3 Cal.4th 41, 106-107) and the presence of equivocation or ambiguity in the request (*People v. Barnett* (1998) 17 Cal.4th 1044, 1109-1110).

2. *Timeliness of Request*

At the outset, we must resolve whether appellant's request for self-representation was timely.[4] Although appellant sought self-representation in the

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[4] We requested and received supplemental briefing from the parties regarding the timeliness of the appellant's request and the standard for prejudice applicable to errors in the trial court's ruling.

course of the trial, he contends that his request was timely because the trial court remarked that appellant "ha[d] a right to [self-representation]" when appellant raised the request. However, we are not bound by the trial court's determination, as the existence of a right to self-representation presents a question of law, namely, the legal basis for self-representation at the point in the proceedings at which appellant asserted his request. (See *People v. Bloom*, *supra,* 48 Cal.3d at pp. 1219-1220.)

We find dispositive guidance on this question from *People v. Rivers* (1993) 20 Cal.App.4th 1040 (*Rivers*) and *People v. Givan* (1992) 4 Cal.App.4th 1107 (*Givan*). In these cases, the defendants requested self-representation after the first phase of trial on the charged offenses, but before the second phase of trial on a prior conviction allegation. (*Rivers*, *supra*, 20 Cal.App.4th at p. 1047; *Givan*, *supra*, 4 Cal.App.4th at p. 1110.) The appellate courts concluded that the requests were untimely, reasoning that the bifurcated phase of trial devoted to prior conviction allegations is merely part of the trial. (*Rivers*, *supra*, 20 Cal.App.4th at p. 1048; *Givan*, *supra*, 4 Cal.App.4th at pp. 1113-1114.) We reach the same conclusion here.

Appellant's reliance on *People v. Miller* (2007) 153 Cal.App.4th 1015 is misplaced. There, the defendant asserted a request for self-representation after the completion of trial, but before the sentencing proceeding. (*Id*. at p. 1018.) The appellate court held that the request was timely because it arose after the trial and well before sentencing, which constituted a "separate proceeding[] from the trial." (*Id*. at pp. 1023-1024). Here, appellant asserted his request during the trial, which the court in *Miller* acknowledged to be an appropriate basis for regarding requests as untimely. (*Ibid*.) Accordingly, appellant's request was untimely, and thus consigned to the trial court's discretion.

3. *Competence To Represent Oneself*

The main issue regarding the trial court's ruling concerns the standard for mental competence regarding requests for self-representation. As we elaborate below (see pt. A.4, *post*), the trial court placed special emphasis on appellant's competence in denying his request for self-representation. Generally, in the context of such requests, mental competence is distinguished from legal competence: the fact that the defendant is likely to perform poorly as an attorney due to lack of skill or training is not, by itself, grounds for denying a request for self-representation. (See *People v. Taylor* (2009) 47 Cal.4th 850, 866 (*Taylor*); *Bradford*, *supra*, 15 Cal.4th at p. 1364.) The leading cases regarding the pertinent standard for mental competence are *Godinez v. Moran* (1993) 509 U.S. 389 (*Godinez*) and *Indiana v. Edwards* (2008) 554 U.S. 164 [128 S.Ct. 2379] (*Edwards*).

In *Godinez*, the United States Supreme Court addressed whether competence for purposes of *Faretta* requests may be assessed under the test applicable to the competence to stand trial, as established in *Dusky v. U.S.* (1960) 362 U.S. 402 (*Dusky*). (*Godinez*, *supra*, 509 U.S. at p. 396.) Under the *Dusky* test, a defendant is competent to undergo trial when he "'has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding'" and has "'a rational as well as factual understanding of the proceedings against him.'" (*Dusky*, *supra*, 362 U.S. at p. 402.) In *Godinez*, the defendant was found to be competent to stand trial and was granted leave to represent himself. (*Godinez*, *supra*, 509 U.S. at pp. 391-392.) The defendant later challenged the order permitting self-representation on the ground that he lacked the mental capacity to waive his right to counsel. (*Id*. at p. 395.) The United States Supreme Court held that a defendant's competence to waive counsel is properly assessed under the *Dusky* test. The high court explained: "[W]hile States are free to adopt competency

standards that are more elaborate than [this test], the Due Process Clause [of the federal Constitution] does not impose these additional requirements." (*Id*. at p. 402.)

In the aftermath of *Godinez*, California appellate courts held that trial courts must apply the *Dusky* test when assessing a defendant's competence to proceed in propria persona. At least three Courts of Appeal concluded that for purposes of timely self-representation requests, it is error to apply a higher standard than the *Dusky* test to determine competency. (*People v. Poplawski* (1994) 25 Cal.App.4th 881, 894-895; *People v. Nauton* (1994) 29 Cal.App.4th 976, 978-979; *People v. Hightower* (1996) 41 Cal.App.4th 1108, 1114-1115.) Our Supreme Court reached similar conclusions in cases involving timely *and* untimely requests for self-representation. (*People v. Welch*, *supra*, 20 Cal.4th at pp. 732-733 [timely request]; *Bradford*, *supra*, 15 Cal.4th at p. 1373 [untimely request].)

In *Edwards*, which was decided in 2008, the United States Supreme Court clarified that the federal Constitution does not bar the states from applying a higher competency standard than the *Dusky* test to *Faretta* requests. (*Edwards*, *supra*, 554 U.S. at p. ___ [128 S.Ct. at p. 2384].) There, the trial court found that the defendant, although suffering from schizophrenia, was competent to stand trial, but denied his repeated requests for self-representation on the ground that he was incompetent to defend himself. (*Id*. at pp. ___ [128 S.Ct. at pp. 2382-1283].) The high court framed the issue before it as whether the United States Constitution *obliges* the states to apply the *Dusky* test to *Faretta* requests. (*Id*. at pp. ___ [128 S.Ct. at pp. 2384-1285].) As the high court noted, *Godinez* did not resolve this issue: because *Godinez* concerned a defendant who had been permitted to represent himself, it established only that defendants who are competent to stand trial under the *Dusky* test *may* be allowed to represent themselves. (*Id*. at pp. ___ [128 S.Ct. at pp. 2384-1285].)

In affirming the denial of self-representation, the high court declined to mandate a single standard for deciding both whether a defendant is capable of undergoing trial and whether he should be permitted to represent himself. (*Edward, supra,* 554 U.S. at p. ___ [128 S.Ct. at p. 2386].) The court reasoned that a defendant may have the mental capacity to undergo trial -- that is, to make trial-related decisions with the aid of counsel -- yet lack the mental capacity to conduct a defense without assistance. (*Id*. at p. __ [128 S.Ct. at p. 2386].) The court concluded: "[T]he Constitution permits judges to take realistic account of the particular defendant's mental capacities by asking whether a defendant who seeks to conduct his own defense at trial is mentally competent to do so. That is to say, the Constitution permits States to insist upon representation by counsel for those competent enough to stand trial . . . but who still suffer from severe mental illness to the point where they are not competent to conduct trial proceedings by themselves." (*Id*. at p. ___ [128 S.Ct. at pp. 2387-2388].)

4. *Underlying Proceedings*

Appellant was represented by an appointed attorney, Deputy Public Defender Alan Nakasone, during the guilt phase of trial. On March 20, 2009, the jury returned its verdicts on the charged offenses and gun use allegations. When the trial court asked appellant whether he preferred a jury trial or bench trial on the prior conviction allegations, Nakasone told the court that appellant wished to exercise his "*Faretta* right." Appellant confirmed that he wanted to represent himself. In response to the trial court's questions, appellant stated that he had never acted as his own counsel in the past; that he had completed the ninth grade, and obtained a G.E.D. while held in the California Youth Authority; that he was familiar with legal procedures through "watch[ing] CSI"; and that he had never suffered from any mental or emotional disorders.

After informing appellant that he was entitled to continuing representation from Nakasone "free of charge," the trial court inquired into appellant's knowledge of the next stage of the trial. The following colloquy ensued:

"The Court: And do you know what stage we are now in the trial? Tell me.

"[Appellant]: The stage -- they just gave me the verdict, right? I mean, this [is] like the stage of my life?

"The Court: Exactly. But what's left to do in this case? [¶] . . . [¶]

"[Appellant]: Start all over, right, if I exercise my *Faretta*? Just start all over.

"The Court: No. We just continue where we left off.

"[Appellant]: That's a good thing, your honor."

"The Court: So what is the next step in this trial?

"[Appellant]: Next step is questioning. Right? More questions?

"The Court: Who is going to be questioned? What questions are we dealing with?

"[Appellant]: The D.A. gonna question me more, and then --.

"The Court: No, the D.A. is not going to question you at all. The reason I am --

"[Appellant]: I don't know what's gonna be next. But I can learn -- learn, yeah, before I come back.

The trial court remarked that it was unlikely to grant a continuance if appellant represented himself, and stated: "We'll just proceed with the next stage. The next stage is, in many ways, more important than what's happened already." The trial court asked whether appellant knew the maximum sentence based on the jury's determinations. Appellant answered: "Maybe like 2000 years. However everything seems[s], I'm getting convicted of a gun [that] had no fingerprints on it. Maybe 2000 years."

Noting that appellant faced a maximum sentence of six years "right now," the trial court explained: "The next stage is a trial on whether you have prior convictions as strikes, whether you've been to state prison, whether you have a conviction for a serious felony. This is the stage where if you lose, representing yourself, and the jury finds that you have two prior strikes and you [have] been to state prison, one of the strikes is a serious felony conviction, you're looking at 25 [years] to life for the strikes, an additional 5 years for the serious felony conviction, one year for the prison commitment. So you're looking at 31 years to life now if you lose this second stage."

After the trial court encouraged appellant to retain Nakasone as his counsel, the following dialogue occurred:

"The Court: . . . The second trial is a real trial. The lawyer needs to ask questions, present evidence, object, be a competent lawyer. Don't you want Mr. Nakasone to do that for you?

"[Appellant]: No. I am a lawyer myself, too. I mean, I can speak good for myself, but knowing things that if I'm present in my own place, I know where the bedroom at, I know where the bathroom at, I know where the kitchen at.

"The Court: We're not going to talk about that in this stage. All that doesn't matter.

"[Appellant]: What about the gun -- the gun with no fingerprints on it? Don't that matter. I am being convicted for a gun.

"The Court: That doesn't matter now, either. What does matter now in the second stage? . . .

"[Appellant]: What is important, the first conviction -- that's what [is] really important because that right there . . . I can beat that. But that conviction what I just got, that what really matters."

When the trial court asked appellant to explain what the prosecutor would try to do in the second phase of the trial, appellant responded as follows:

"[Appellant]: Whatever the prosecutor trying to do? Convict me of another crime.

"The Court: What crime?

"[Appellant]: One crime -- burglary and robbery.

"The Court: Wrong.

"[Appellant]: And, also --

"The Court: Wrong.

"[Appellant] That's why I got convicted, right, robbery with a gun?

"The Court: Yes. That wasn't my question. My question is . . . in the second stage, what is [the prosecutor] going to try to prove to this jury?

"[Appellant]: That the place was burglarized by the fingerprint on the . . . cash register."

Following this colloquy, the trial court denied appellant's request for self-representation. The court stated: "I rule [appellant] is not competent to represent himself. He is competent to stand trial, though."

5. *Analysis*

We conclude that the trial court erred in denying the request. As explained below, the denial is infirm for two reasons. Because California has adopted no competency standard for self-representation other than the *Dusky* test, the trial court was obliged to find that appellant was competent to represent himself upon determining that he was competent to stand trial. Moreover, even if the standard elaborated in *Edwards* were applied, appellant could not be judged incompetent to represent himself under that standard.

We begin by determining the standard governing competency. As our Supreme Court recently explained in *Taylor*, *supra*, 47 Cal.4th 850, *Edwards* did

not abrogate of the use of the *Dusky* test, which California courts have repeatedly identified as the appropriate competency standard for self-representation. There, the defendant was found to be competent to stand trial and repeatedly sought leave to represent himself, which the trial court granted shortly after the inception of jury selection. (*Id*. at pp. 856, 867-868.) The defendant later challenged the order permitting self-representation -- which predated *Edwards* -- arguing that he was incompetent under the *Edwards* standard. (*Taylor*, *supra*, 47 Cal.4th at p. 878.) In rejecting the contention, our Supreme Court noted that before *Edwards*, several appellate courts and the Supreme Court itself had held that when a defendant seeks self-representation, it is error to apply a more stringent standard than the *Dusky* test. (*Id*. at pp. 874-878, 880.) As *Edwards* did not mandate a different test, the Supreme Court concluded that the prevailing California case authority obliged the trial court to apply the *Dusky* test. (*Taylor*, *supra*, 47 Cal.4th at p. 880).

We reach the same conclusion here. As noted above (see pt. A.3, *ante*), our Supreme Court has applied the *Dusky* test to timely and untimely requests for self-representation. In discussing *Edwards*, the *Taylor* court neither mandated the use of the *Edwards* standard nor disapproved the prior authority requiring the application of the *Dusky* test. Because *Taylor* is our Supreme Court's most recent pronouncement on this issue, the *Dusky* test remains the competency standard for purposes of self-representation requests, whether timely or untimely. (*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455.) As the trial court determined that appellant was competent to stand trial, the court was obliged to find that he was competent to represent himself.

Moreover, appellant would not be assessed as mentally incompetent under the standard stated in *Edwards*, even if it were applicable. In elaborating the standard, the United States Supreme Court explained: "Mental illness itself is not a unitary concept. It varies in degree. It can vary over time. It interferes with an

individual's functioning at different times in different ways. . . . In certain instances an individual may well be able to satisfy *Dusky's* mental competence standard, for he will be able to work with counsel at trial, yet at the same time he may be unable to carry out the basic tasks needed to present his own defense without the help of counsel." (*Edwards*, *supra*, 554 U.S. at p. ___ [128 S.Ct at p. 2386].) As mental illness may undercut a defendant's ability to present a defense in many ways, the high court concluded that trial courts may "take a realistic account of the particular defendant's mental capacities." (*Id*. at pp. ___ [128 S.Ct at pp. 2387-2388].)

Here, there is no evidence that appellant suffers from any mental illness or infirmity. He stated that he had no mental or emotional disorders, and that he had obtained a G.E.D. after completing the ninth grade; in addition, at trial, he testified that he was attending classes at Long Beach City College. Although appellant appeared to be confused about status of the legal proceedings when he sought self-representation, nothing before us suggests that his confusion arose from a mental disorder or incapacity, rather than a lack of legal knowledge and training. As explained above (see pt. A.3, *ante*), deficiencies in legal knowledge and skills do not constitute incompetence for purposes of self-representation.

Respondent contends that appellant "demonstrated a complete inability to comprehend the second phase of the trial and its consequences, despite the trial court's explanations." In this regard, respondent notes appellant's remark that his maximum sentence might be 2000 years; in addition, respondent points to appellant's remarks following the trial court's explanation of the second phase of trial, which indicate that appellant believed that the second phase concerned the robbery and burglary charged against him.

In our view, appellant's remarks betray only a lack of legal knowledge. When the trial court asked whether appellant knew the maximum sentence he

potentially faced, he answered, "Maybe like 2000 years," but added, "*I don't know what's gonna be next*. But I can learn -- learn, yeah, before I come back. (Italics added.) Later, when the trial court explained that the second phase of trial concerned whether appellant had "prior convictions as strikes," the trial court offered no definition of "strike." Nothing before us establishes that appellant understood the meaning of this technical legal term. As appellant apparently did not know whether the jury's verdicts regarding counts 1 and 2 in the first phase of trial might constitute "strikes," his confusion about whether the second phase of trial also concerned counts 1 and 2 cannot reasonably be traced to mental infirmity, rather than lack of legal expertise.[5] (See *People v. Poplawski, supra*, 25 Cal.App.4th at pp. 894-895 [defendant's lack of familiarity with legal terminology and procedures does not establish mental incompetence for purposes of self-representation].)

Respondent contends that the denial of self-representation was correct on another ground, namely, that the request was equivocal because it stemmed from appellant's frustration with the verdicts in the first phase of trial. However, nothing before us demonstrates that appellant's request was ambiguous or the impulsive product of a transitory emotion. Appellant clearly asserted his request to represent himself and firmly pressed it throughout his colloquy with the trial court. As the trial court did not inquire into appellant's reasons for his request, the record does not disclose his motives.

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5 We recognize that appellant, in explaining why he could serve as his own counsel, made the following -- somewhat obscure -- statement to the trial court: "I mean, I can speak good for myself, but knowing things that if I'm present in my own place, I know where the bedroom at, I know where the bathroom at, I know where the kitchen at." This statement apparently refers to appellant's trial testimony, during which he provided a detailed description of his residence in an effort to show that the gun and other items found there did not belong to him.

Respondent also suggests that the denial may be affirmed on the basis of the *Windham* factors. We disagree. Although the trial court's remarks touched on some of the *Windham* factors, the record affirmatively demonstrates that the trial court did not rely on these factors in rejecting appellant's request. Under these circumstances, the denial must be regarded as error. (*People v. Rivers*, *supra*, 20 Cal.App.4th at pp. 1048-1049.)

6. *No Prejudice From Error*

The remaining issue is whether the judgment must be reversed. Although error in denying a timely motion for self-representation is ordinarily reversible per se, the improper denial of an untimely motion is assessed for prejudice under the test stated in *People v. Watson* (1956) 46 Cal.2d 818, 836 (*Watson*). (*People v. Rogers* (1995) 37 Cal.App.4th 1053, 1058; *People v. Rivers*, *supra*, 20 Cal.App.4th at pp. 1050-1053.) Under *Watson*, an error is reversible only if "it is reasonably probable that a result more favorable to the [defendant] would have been reached in the absence of the error." (*Watson*, *supra*, 46 Cal.2d at p. 836.) As explained below, the error was harmless.

After denying appellant's request for self-representation, the trial court found that one of the two prior convictions alleged against appellant did not constitute a "strike" because appellant was less than 16 years old when he committed the offense. Represented by counsel, appellant elected to undergo a bench trial on the remaining prior conviction allegations. During the bench trial, the prosecutor presented evidence that in 2002, appellant was convicted of assault with a deadly weapon, and was found to have personally used a deadly or dangerous weapon in the commission of the offense; in addition, the prosecutor presented evidence that appellant had served a prison term for the conviction.

Following the bench trial, the trial court found that the remaining prior

conviction allegations were true. Regarding count 1, the trial court imposed the midterm of three years, and doubled the term due to appellant's strike (§§ 667, subds. (b)-(i), 1170.12, subds. (a)-(d)); additionally, it imposed a five-year enhancement for the prior conviction (§ 667, subd. (a)(1)) and a one-year enhancement for personal use of a gun (§12022, subd. (b)(1)). In the interest of justice, the trial court declined to impose another one-year enhancement for a prior prison term (§667.5, subd. (b)). Punishment on count 2 was stayed (§ 654).

On this record, we discern no prejudice under *Watson*. While represented by counsel, appellant received a lesser sentence than the trial court was authorized to impose. Nothing before us suggests that it was reasonably likely that appellant would have obtained a more favorable outcome had he represented himself: the evidence establishing the prior conviction allegations was compelling, and appellant offers no account of how he might have rebutted this evidence. In sum, there was no reversible error.

B. *Error in the Abstract of Judgment*

Although the reporter's transcript of the sentencing hearing reflects that the trial court imposed a single one-year enhancement on count 1 under section 12022, subdivision (b)(1), the minute order following the hearing and the abstract of judgment state that the one-year enhancement was imposed under section 667.5, subdivision (b).[6] Because the reporter's transcript clearly establishes that the trial

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6 As our Supreme Court explained in *People v. Smith* (1983) 33 Cal.3d 596, 599, the correct approach for resolving such conflicts "is outlined in the following passage from *In re Evans* (1945) 70 Cal.App.2d 213, 216 . . . : 'It may be said . . . as a general rule that when, as in this case, the record is in conflict it will be harmonized if possible; but where this is not possible that part of the record will prevail, which, because of its origin and nature or otherwise, is entitled to greater credence [citation]. Therefore whether the recitals in the clerk's minutes should prevail as against contrary statements in the reporter's transcript, must depend upon the circumstances of each particular case.'"

court imposed the one-year enhancement under section 12022, subdivision (b)(1), rather than under section 667.5, subdivision (b), the abstract of judgment must be amended to correct the error.

DISPOSITION

The judgment is affirmed. The trial court is directed to prepare an amended abstract of judgment reflecting that the single one-year enhancement on count 1 (second degree robbery) was imposed under 12022, subdivision (b)(1) (see pt. B, *ante*), and forward a copy of the amended abstract of judgment to the California Department of Corrections and Rehabilitation.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

MANELLA, J.

We concur:

EPSTEIN, P. J.

WILLHITE, J.